

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

JOSE AVITIA-BUSTAMANTE,

Petitioner,

v.

Civil Action No: 1:13-21384

B.J. JOHNSON,  
Warden,

Respondent.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. No. 1). By Standing Order, this matter was referred to United States Magistrate Dwane L. Tinsley for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. No. 4). Magistrate Judge Tinsley submitted to the court his Proposed Findings and Recommendation on July 26, 2016, in which he recommended that the district court deny as moot petitioner's petition for a writ of habeas corpus and dismiss this action from the court's docket.<sup>1</sup> (Doc. No. 7).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing

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<sup>1</sup> Magistrate Judge Tinsley notes in his PF&R that petitioner was released from custody on August 6, 2014, thereby rendering petitioner's petition moot. (Doc. No. 7 at 2).

days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure to file such objections constitutes a waiver of the right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Petitioner failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Tinsley, the court adopts the findings and recommendation contained therein.

Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly the court **DENIES** a certificate of appealability.

The court hereby **ADOPTS** the factual and legal analysis contained within the PF&R, **DENIES as moot** petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, (Doc. No. 1), and **DIRECTS** the Clerk to remove this case from the court's docket.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to counsel of record and petitioner, pro se.

It is **SO ORDERED** this 15th day of August, 2016.

ENTER:

David A. Faber

David A. Faber  
Senior United States District Judge